

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CONCORD COMPUTING CORPORATION,
a Delaware corporation

Civ. No. 06-1514-AA

Plaintiff,
v.

OPINION AND ORDER

FINANCIAL CONSULTING AND TRADING
INTERNATIONAL, INC., a California
corporation,

Defendant.

Aiken, Judge:

Defendant moves to supplement its answer and assert the affirmative defense of issue preclusion. Defendant contends that the jury verdict returned in favor of defendant in Concord Computing Corp. v. Fin. Consulting & Trading Int'l, Inc., Civ. No. 05-1209-RPM (D. Colo. May 10, 2007) conclusively resolves several factual issues relevant to this case. Plaintiff objects on grounds that the amendment is futile.¹

¹Plaintiff also argues that defense counsel failed to confer as required by L.R. 7.1. However, after review of the communication between counsel, I find the conferral adequate.

Plaintiff maintains that it does not intend to claim or raise issues that were decided in the Colorado case, and that issue preclusion will not be applicable in this case. However, at this stage of the proceedings, the record is not clear what facts or issues plaintiff intends to allege or what facts will be relevant to plaintiff's claims. Accordingly, I cannot find that "no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." See Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988). Moreover, regardless of whether issue preclusion is asserted as an affirmative defense, if it is applicable, I may consider the issue *sua sponte*, so long as plaintiff is provided an opportunity to be heard on the issue. See Clements v. Airport Auth. of Washoe County, 69 F.3d 321, 330 (9th Cir. 1995).

Finally, given the circumstances, I do not find the proposed amendment to be untimely, prejudicial or in bad faith. Therefore, the motion is allowed.

Conclusion

Defendant's Motion to Supplement Answer (doc. 45) is GRANTED.
IT IS SO ORDERED.

Dated this 21 day of September, 2007.

/s/ Ann Aiken
Ann Aiken
United States District Judge